



# Terms of Service

Version: 22.07.2019

**These Terms of Service are effective on and from 22<sup>nd</sup> July, 2019, and are subject to periodic revisions and updates.**

**1. IMPORTANT- PLEASE READ CAREFULLY: BY USING THE SERVICES YOU (as defined below) AGREE TO BE BOUND BY THESE TERMS OF SERVICE. THESE TERMS OF SERVICE ARE BETWEEN PGI AND YOU (collectively the "Parties"). IF YOU DO NOT AGREE WITH THESE TERMS OF SERVICE DO NOT USE THE SERVICES.**

**Definitions**

"**Agreement**" means these terms and conditions, the PGI privacy policy which is located at <http://nz.pgi.com/privacy-policy/> or any successor website thereto and the Customer Service Agreement/Particular Agreement conditions.

"**Licensed Services**" shall mean those Services that are available under a Subscription Plan.

"**Minimum Commitment**" shall mean any minimum commitment of time and usage for use of the Services by You during the Term of this Agreement.

"**Named User Licences**" shall mean an individual designated and identified by You as an organizer/administrator who is authorized to schedule conferences using the Licensed Services.

**PGI** means Premiere Conferencing Limited (1178893)

"**Related Services**" shall mean any ancillary services associated with the Services included but not limited to the verbatim transcription of any recorded communication between You and a third party/parties.

"**Services**" shall mean PGI audio, web and video conferencing services ("PGi Meeting Solutions"), including without limitation, any PGI desktop, tablet and mobile applications associated with the PGI Meeting Solutions, Sites and Related Services.

"**Site(s)**" any and all web sites offered by PGI to provide the Services.

"**Subscription Charge**" shall mean charge payable by You on a recurring basis where You have entered into a Subscription Plan.

"**Subscription Plan**" means a fixed term plan which relates to the Licensed Services as specified in the PGI Service Agreement

"**Term**" means collectively the Initial Term and any Renewal Term(s), as more particularly set out in this Agreement.

"**You**", "**Your**" or "**Customer**" means a party acting strictly in the course of a business and with whom PGI has entered into this Agreement.

**2. Services and Pricing.**

**(a) Sales to the Customer.** Charges for the use of Services are invoiced on a monthly basis. Software license fees shall be invoiced in advance and usage fees are invoiced in arrears.

**Minimum commitment.** Without prejudice to clause 2.2(g), in the event You have agreed to a Minimum Commitment and You do not meet it in any given month, quarter or year (as applicable) You shall pay the shortfall equal to the difference between the Minimum Commitment less any actual usage made by You during that particular period.

**Subscription Plan.** Without prejudice to clause 2.2(g), in the event You have agreed to a Subscription Plan, if at the end of each month it is determined by PGI that You have utilised the Services in excess of or in addition to the level set forth in a particular tier during that month, then You shall pay to PGI all charges for actual usage or consumption incurred during that month on account of the Services utilised in excess of or in addition to the Services set forth in that particular tier at the overage rate detailed in the Customer Service Agreement, provided that You may adjust the package to an upward level at any time by providing PGI written notice and receive the benefit of the lower price. Fees payable for overage amounts shall be invoiced monthly, in arrears, on the basis of minutes of use.

It is understood and agreed between the Parties that any payments made during the Term that exceeded the Minimum Commitment or Monthly Subscription Charge shall not apply to, or in any way be credited against, any other, past or present payments of Minimum Commitment or Monthly Subscription Charge or the overall shortfall amount during the Term.

You acknowledge and agree that PGI reserves the right to change pricing or modify or discontinue any or all of the Services and any related dial-in numbers or other methods of access at any time for any reason, without notice. Without limiting the foregoing, PGI reserves the right, in its sole discretion, to change or institute new or additional charges and/or fees for access to or use of Services (including for ancillary services, new or additional features and/or "apps") at any time as provided in this Agreement.



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**(b) Named User Licences.** Named User licenses cannot be shared among multiple individuals and separate Named User licenses must be purchased for each individual. Named Users may only include up to the total number of Maximum Meeting Participants in any single conference. For the purposes of this provision and PGI provided services, a "Named User" is an individual designated and identified by the Customer as an organizer/administrator who is authorized to schedule conferences using PGI provided services and "Maximum Meeting Participants" means the maximum number of meeting participants, including the Named User, that may be in a conference using PGI provided services at the same time as designated by PGI. Only one conference using PGI provided services may occur at any given time (i.e. no concurrent meetings) per licensed Named User. Named Users may not combine with other Named Users or otherwise expand a conference using PGI provided services scheduled by a Named User to allow more than the Maximum Meeting Participants. For each conference using PGI provided services scheduled by a Named User, the Named User must (1) initiate or schedule the conference; (2) host the conference by entering as a presenter; and (3) act as an organizer of the conference through use of their organizer identification. Customer is at all times responsible for monitoring and maintaining the use of the Named User licenses within the forgoing parameters, and the Customer shall indemnify PGI in the event a claim is brought or damages are incurred due to Customer's misuse of the Named User license. A Named User designation may not be transferred to another Customer employee except upon (a) termination of the Named User's employment with Customer, or (b) in all other instances, PGI's express prior written approval.

**Increasing Named Users.** For so long as PGI supports such selections, You may increase Your number of Named Users, at any time, by submitting Your selections on PGI Hub for Global Meet, Cloud Controls for iMeet or through PGI Client Support team. All selections for increases in Named Users by You will become an integral part of this Agreement, increase your Total Subscription Fee and be subject to automatic renewal. You will be billed for such increase in Named Users, beginning as of the date of selection. For the avoidance of doubt, all selections and resulting Named Users shall be subject to PGI's terms and conditions, including without limitation, these Terms of Service for use of the Licensed Services, You are fully responsible and liable for any and all selections made on PGI Hub or Cloud Controls, submission of selections to PGI using PGI Hub or Cloud Controls will be deemed Your signature and authorization for such orders, and PGI has no obligation to investigate or confirm whether the party submitting an order via PGI Hub or Cloud Controls has authority to bind You.

**(c) Payment Terms, Taxes and Other Charges.** The payment of invoices is due within 30 days from date of invoice. You must notify PGI of any charge disputed in good faith, with supporting documentation, within 30 days from the date of invoice, or You will be deemed to agree to such charges and no adjustments to charges or invoices will be made. You remain responsible to pay undisputed charges by the due date. Without limiting any other rights herein, PGI may suspend Services if PGI determines that Your previous payment record with PGI so warrants. You will pay any collection costs, including reasonable attorneys' fees, and other expenses incurred by PGI to collect any such sums due under this Agreement. You will pay, and PGI reserves the right to collect in arrears taxes (other than taxes based upon PGI's net income), by any government authority upon or with respect to the Services provided. If You claim an exemption from charges, You must provide PGI with a current, valid exemption certificate from the applicable government authority.

**(d) Term and Termination.** After the Initial Term, the Agreement shall be automatically renewed for successive one (1) year terms (each a "Renewal Term"; the Initial Term and Renewal Terms are collectively the "Term"), unless the Customer notifies PGI of its desire to terminate the Agreement by written notice not less than sixty (60) days prior to the end of the Term. In compliance with the notice requirement in the Agreement, such notification must be sent by email to the Customer's PGI Account Manager. For the avoidance of any doubt, in the case that Customer has subscribed for Named User Licences (as defined under this Agreement) under a subscription license model, the Term in course will be binding. In the event of termination before its expiry and which is not due to a breach of this Agreement by PGI, Customer will remain responsible for any and all fees and charges payable under the Agreement through the termination and will not be entitled to any partial month credits or refunds of any kind with respect to the Services. Use and provision of certain resold Services, require minimum commitments for which Customer shall be fully liable.

**(e) Termination for Cause.** On or at any time after the occurrence of any of the events outlined below, either Party may terminate this Agreement (the "Terminating Party") with immediate effect and by way of written notice to the other Party (the "Defaulting Party"). The events are:

(i) The Defaulting Party is in breach of an obligation under this Agreement and in the event of breach capable of remedy fails to remedy the same within 14 days after receipt of a written notice by the Terminating Party giving full particulars of the breach and requiring it to remedy that breach, notwithstanding in the case of payment default by the due date, PGI may in its sole discretion decide to suspend the supply of Services and/or deactivate Your account;

(ii) The Defaulting Party passes a resolution for voluntary winding up or a court of competent jurisdiction making an order for the compulsory winding up or dissolution of the Defaulting Party;



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- (iii) The Defaulting Party is unable to pay its debts as they fall due or makes an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;
  - (iv) At the sole discretion of PGI (acting reasonably), Your illegal, fraudulent or improper use of the Services or if deemed necessary by PGI (acting reasonably), to prevent interruption or disruption to the PGI network, its business or other customers or suppliers.
- (f) Termination for Convenience.** Either party may terminate this Agreement at the end of a Term as described under the Customer Service Agreement/Particular Agreement Conditions .
- (g)** In the event of termination of the Agreement before its expiry and which is not due to a breach by PGI, or if PGI terminates due to Your breach, You remain responsible for the shortfall resulting from Your failure to meet, if applicable, any Minimum Commitment or Subscription Charges for the Term, which amount shall equal the difference between the Minimum Commitment or Subscription Charges multiplied, as applicable by the number of months, quarters or years in the Term left unexpired less any payments for actual usage made by You during the Term.
- (h) Effect of termination.** Upon termination of this Agreement pursuant to this Section 2 any indebtedness owed to PGI becomes immediately due and payable and PGI is relieved of any further obligation to provide the Services to You pursuant to this Agreement.
- (i)** Clauses or other provisions expressed or implied to survive expiry or termination shall survive expiry or termination.

### 3. Proprietary Information, Customer Data and Privacy.

- (a) Proprietary Information.** Each party and its employees and agents shall at all times, during the Term and thereafter, keep in trust and confidence all information relating to the other party that is of a confidential and proprietary nature ("Proprietary Information") and shall not use such Proprietary Information other than in the course of their duties under this Agreement, nor shall either party or its employees and agents disclose any of such Proprietary Information to any individual or entity without the other party's prior written consent, or if required by law. Each party acknowledges that any such Proprietary Information received by the other party shall be received as a fiduciary of the other party. Each party further agrees to immediately return to the other party or destroy all Proprietary Information in its possession, custody or control in whatever form held (including all copies of all written documents relating to that) upon termination of this Agreement or at any time, or from time to time, upon the request of the other party. The obligation of confidentiality contained in this Section shall not apply or (as the case may be) shall cease to apply to information which: (i) At the time of its disclosure is already in the public domain or which subsequently enters the public domain other than by breach of this Section 3(a), or (ii) Subsequently comes lawfully into the possession of the receiving party from a third party; or (iii) Is needed to be disclosed by You to its authorized users for the purpose of accessing or using the services, or (iv) Is required to be disclosed by applicable law or order of a court of competent jurisdiction or government department or agency, provided that prior to such disclosure the receiving party shall advise the disclosing party of the proposed form of the disclosure.
- (b) Customer Data.** PGI acknowledges Your rights, title, and/or interest in and to all electronic data or information uploaded, stored, recorded, retrieved or transmitted by You through its use of the Service ("Customer Data") and such Customer Data is deemed to be Your confidential information under this Agreement. PGI shall not access any Customer Data, except to respond to service or technical problems which may arise and/or at Your request, or otherwise compelled by law. If PGI is compelled by law to disclose Your Proprietary Information or Customer Data, PGI shall provide You with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Your cost, if You wish to contest the disclosure. Customer Data will be protected by PGI with at least the same protective precautions that PGI takes to protect its similar proprietary or confidential information. PGI is not obligated to provide a disaster recovery plan in respect to Customer Data and PGI accepts no responsibility to You for the recovery of deleted Customer Data. PGI reserves the right to remove any Customer Data that constitutes Objectionable Material or violates any Service Provider rules regarding appropriate use, but is not obligated to do so. You acknowledge that PGI has no control over the content of the information transmitted by You through the Services and that PGI does not access, view or listen to any Content in order to examine the use to which You put the Services or the nature of the information You send or receive except as necessary for the performance of the Services.
- (c) Privacy.** Except as otherwise stated in this Agreement, the Services and any personal information received from You, is subject to PGI's Privacy Policy at <http://nz.pgi.com/privacy-policy/>. In order to provide the Services, You acknowledge that it is necessary for PGI to disclose such personal information received from You and/or Your Named Users to PGI's group companies in other countries (including the United States of America and other overseas locations where PGI shall maintain adequate level of protection), and You hereby consent to such transfer. Notwithstanding the above, the transfer of personal information shall not affect PGI's obligations at law, in relation to such personal information.



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## 4. Intellectual Property.

- (a) The Services provided under this Agreement and all associated intellectual and proprietary rights are the sole property of PGI and/or its affiliates or suppliers, and except as required for use of the Services, You have no right or license to use any of the trademarks or trade names owned by, licensed to or associated with PGI (the "PGI Marks") during the term of this Agreement without express written consent from PGI. Despite prior approval, You will immediately cease and desist using the PGI Marks upon notice from PGI or upon termination of this Agreement for any reason. Any use by You of the PGI Marks other than as described above will constitute a breach of this Agreement for which, in addition to any other remedies available at law or in equity, PGI may terminate this Agreement.
- (b) You are being granted a limited, non-exclusive, non-transferable, non-sublicensable revocable right to use Services, and any software associated with the Services. All other rights are reserved by PGI, and You agree that it shall not remove, obscure or alter any proprietary rights notices (including copyright and trademark notices) which may be affixed to or contained within the Services.
- (c) Submissions. As between PGI and You, PGI alone will own all rights, title and interest, including all related intellectual property, to any suggestions, ideas, feedback, improvements, recommendations or other information created, conceived, or reduced to practice, by You or on Your behalf.
- (d) You warrant and represent that You are the owner or licensee of any content that You upload, store, record or otherwise transmit through the Services through internet, including but not limited to photographs, caricatures, illustrations, designs, icons, articles, text, audio clips, and video clips (collectively, "the Content"). You are solely responsible for the Content including making and keeping backup copies of the Content. You warrant and represent You will not publish, store, post, upload, record or otherwise transmit the Content that: (i) infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (ii) violates any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination or false advertising); (iii) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (iv) is profane, indecent, obscene, harmful to minors or child pornographic; (v) contains any viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information or property of another; or (vi) is materially false, misleading or inaccurate.
- (e) You shall not knowingly, wilfully or recklessly: (1) use the Services through internet in connection with chain letters, junk mail, surveys, contests, pyramid schemes, spamming or any duplicative or unsolicited messages, or any use of distribution lists to any person who has not given specific permission to be included in such a process (commercial or otherwise); (2) harvest or otherwise collect information about others, including e-mail addresses, without their consent; (3) use, download or otherwise copy, or provide (whether or not for a fee) to a person or entity that is not a user of the Services any directory of other users or usage information or any portion thereof other than in the context of Your use of the Services; (4) knowingly interfere with or disrupt networks connected to the Services or violate the regulations, policies or procedures of such networks; (5) attempt to gain unauthorised access to the Services, other accounts, computer systems or networks connected to the Services, through password mining or any other means; or (6) use the Services for illegal purposes (including without limitation, gambling or betting). PGI or its suppliers may, at their discretion and upon reasonable belief, take any reasonable action they deem necessary, if Your conduct fails to conform with this Agreement or which may create liability for PGI. acknowledge

## 5. Indemnities

You shall indemnify and defend PGI, its officers, directors, employees, affiliates and its suppliers from any claims, losses, damages, penalties or costs (including without limitation reasonable attorneys' or expert witness fees) to the extent caused by or contributed to by Your (or any individual or entity accessing the Services through Your account): (i) use of the Services in contravention with the terms of this Agreement or in violation or alleged violation of any applicable laws or regulations with respect to the Services; or (ii) the infringement of any intellectual property rights of any third party. The obligations contained in this paragraph shall survive any termination or suspension of the Services contemplated herein, the expiration or termination of this Agreement and final payment.

You represent and warrant that neither You nor any of your officers, directors, employees, agents or other representatives has performed or will perform any of the following acts in connection with this Agreement or any related agreement, any compensation paid or to be paid hereunder, or any other transactions involving the business interests of PGI: directly or indirectly, though itself, themselves, a party with an interest, or an intermediary, offer, pay, promise or authorize to offer, pay, or promise any money, gift, or anything of value, to any person or entity, whether private or governmental, for the purpose of obtaining or retaining business, securing any improper advantage, or inducing or rewarding any favourable action.



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You represent that neither You nor your employees, officers, directors, affiliates, agents, contractors, or representatives are employed by a foreign government, government agency, state-owned entity, public international organization, political party, political party official, or candidate for political office.

## 6. Limited Warranty

All Services provided pursuant to this Agreement are provided or performed on an "as is", "as available" basis and Your use of the Service is solely at Your own risk. You acknowledge that Services may not reliably work or maybe limited or restricted in some international jurisdictions that regulate particular telecommunication or data services or where the local government actively blocks or otherwise interferes with cross-border data flows. Any condition or warranty which would otherwise be implied in this Agreement is hereby excluded. Where legislation implies in this Agreement any condition or warranty, and that legislation prohibits provisions in a contract excluding or modifying the application of or liability under such condition or warranty but allows the liability thereunder to be limited, the condition or warranty shall be deemed to be included in this Agreement and PGI's liability for any breach of such condition or warranty shall be limited, at its option, to one or more of the following the supplying of the services again or the payment of the cost of having the services supplied again.

## 7. Limitation of Liability

Except in relation to liability for personal injury (including sickness and death) caused by the negligence or wilful default of PGI, PGI shall have no liability to You in respect of any loss or damage (including without limitation loss of revenue, loss of profits, loss of goodwill, loss of anticipated savings, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair or replacement) loss of opportunity or expectation loss of any other form of consequential, special, indirect, punitive or exemplary loss or damage) which may be suffered or incurred in respect of services supplied pursuant to this Agreement or in respect of a failure or omission on the part of PGI to comply with its obligations under this Agreement. The entire liability of PGI under or in connection with the supply of the Services, whether for negligence, breach of contract, misrepresentation or otherwise is limited to an amount equivalent to the charges (calculated on a pro-rated basis for advance payments) paid to PGI by You for the Services performed during the twelve (12) month period immediately prior to the date of the event, act or omission giving rise to the liability. In the event some or all of the foregoing limitations in this Section 6 may not be effective in the applicable jurisdiction or to the extent the applicable law mandates a more extensive warranty, the applicable law will prevail over these terms.

## 8. Notices.

All other notices, requests, claims, demands and other communications hereunder ("**Notices**") shall be in writing in English and shall be given (i) by delivery in person (ii) sent by registered mail or (iii) by electronic mail to the address of the party specified in the Service Agreement or such other address as either party may specify in writing. Notifications to PGI, including without limitation all termination notices, shall be addressed to: Premiere Conferencing Limited (1178893) Level 3, 48-52 Wyndham Street, Auckland, New Zealand and duplicate of such notice may be submitted by electronic mail. If You have a designated PGI Sales Representative, You must also provide a written copy of any termination notice to such Sales Representative; provided, such copy does and shall not relieve You of Your obligation to follow any other noticing requirements as set forth in this Agreement. Your notices for billing or account management purposes will be addressed to the address (postal and/or e-mail address) provided to PGI.

## 9. Miscellaneous.

**Severability.** If any provision herein is held by a court to be illegal, invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of the illegality, invalidity or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability in any other jurisdiction.

**Waiver.** Any failure by a party to comply with this Agreement may be waived by the other party, but any such waiver must be in writing signed by the waiving party and will not be deemed a waiver of any subsequent failures.

**Third party rights.** Each party enters into this Agreement solely for its own benefit and purpose, and except for PGI's suppliers, this Agreement in no way confers any rights upon, or imposes obligations on either of the parties toward, any third party, including but not limited to any recipient of content transmitted through the Services. This Agreement shall be binding upon and inure to the benefit of the parties' successors, legal representatives and authorized assigns.

**Assignment.** PGI may assign its rights and obligations under this Agreement to an entity that either now or in the future controls, is controlled by or is under common control with PGI or as a consequence of merger, acquisition, change of control or asset sale. You shall not assign Your rights and obligations under this Agreement without PGI's written consent. All sections in this Agreement intended to survive any cancellation, termination, expiration or suspension of this Agreement will so survive.



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**Amendment.** PGi may in its sole discretion amend these terms and conditions from time to time and such amended terms and conditions shall thereafter apply to You. You agree to be responsible for regularly reviewing the PGi web site to obtain timely notice of such amended terms and conditions. Any such amendments shall not affect any agreement concluded prior to any such amendments and each amendment shall be identified by a reference date. By using the Services after posting or delivery of the amended Terms, You will be deemed to have accepted and be bound by such amended terms and conditions.

**Governing law and jurisdiction.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of New Zealand applicable to agreements made and to be performed therein, without regard to any conflicts or choice of law rules. The parties agree to submit to the exclusive jurisdiction of the courts in New Zealand to resolve any disputes arising hereunder.

## **10. Promotional Term; Free Trial Term.**

If you use Services pursuant to a promotional offer granting free Services and/or a free trial for Services, which may include without limitation the waiver of certain fees and/or other charges as defined by a particular promotional offer ("Free Services"), you will receive use of the Free Services solely for a limited period of time and all use of all Free Services shall be subject to the terms herein and any and all other restrictions, limitations and conditions identified or communicated to you with the specific Free Services offer, including without limitation, you are and will remain liable for all charges not otherwise designated as specifically and expressly waived pursuant to the applicable promotional offer. Notwithstanding any other provision in this Agreement, all Free Services are provided solely as an accommodation to you, and PGi reserves the right, at all times and in its sole discretion, to terminate or modify any Free Services at any time without notice, including without limitation for any abuse of the Free Services and/or your failure to pay fees and charges not otherwise designated as specifically and expressly waived pursuant to the applicable promotional offer.

## **11. Entire Agreement.**

This Agreement constitutes the final, complete and entire agreement between the parties with respect to the subject matter hereof, and supersedes any previous proposals, negotiations, agreements or arrangements, whether verbal or written made between the parties with respect to such subject matter. There are no other verbal agreements, representations, warranties, undertakings or other agreements between the parties.

If you reside in a country within the European Union, these terms are an agreement between you and Premiere Conferencing (Ireland) Ltd. Under this agreement, goods and/or services will be delivered via Premiere Conferencing (Ireland) Ltd. as an agent of Premiere Conferencing Limited or by Premiere Conferencing Limited, depending on the type of payment method used for the purchase of the goods and/or services. If you reside in any other country, then these terms are an agreement between you and Premiere Conferencing Limited and goods and/or services will be delivered by Premiere Conferencing Limited directly.